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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-020, A-274-806]

Melamine from the People's Republic of China and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: EFFECTIVE DATE: (INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*).

FOR FURTHER INFORMATION CONTACT: James Terpstra at (202) 482-3965 (the People's Republic of China), or Laurel LaCivita at (202) 482-4243 (Trinidad and Tobago), Office III, AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On November 12, 2014, the Department of Commerce ("Department") received antidumping duty ("AD") petitions concerning imports of melamine from the People's Republic of China ("PRC") and Trinidad and Tobago filed in proper form on behalf of Cornerstone Chemical Company ("Petitioner"). The AD petitions were accompanied by two countervailing duty ("CVD") petitions.<sup>1</sup> Petitioner is a domestic producer of melamine.<sup>2</sup>

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<sup>1</sup> See Petitioner's submission entitled "Petitions for the Imposition of Antidumping and Countervailing Duties: Melamine from China and Trinidad and Tobago," dated November 12, 2014 ("Petitions").

<sup>2</sup> See Volume I of the Petitions, at 1-2.

On November 14, 2014, the Department requested additional information and clarification of certain portions of the Petitions.<sup>3</sup> Petitioner filed responses to these requests on November 18, 2014.<sup>4</sup> On November 18, 2014, the Department requested additional information and clarification of certain portions of the Petitions.<sup>5</sup> Petitioner filed responses to these requests on November 20, 2014 and November 24, 2014.<sup>6</sup>

In accordance with section 732(b) of the Tariff Act of 1930, as amended (“the Act”), Petitioner alleges that melamine from the PRC and Trinidad and Tobago is being, or is likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petitions are accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act. The

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<sup>3</sup> See Letter from the Department to Petitioner entitled “Re: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Melamine from the People’s Republic of China and Trinidad and Tobago: Supplemental Questions,” dated November 14, 2014 (“General Issues Supplemental Questionnaire”), Letter from the Department to Petitioner entitled “Re: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Melamine from the People’s Republic of China: Supplemental Questions,” dated November 14, 2014, and Letter from the Department to Petitioner entitled “Re: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Melamine from Trinidad and Tobago: Supplemental Questions,” dated November 14, 2014.

<sup>4</sup> See “Melamine from China and Trinidad and Tobago/Petitioner’s Response to the Department’s Questions Regarding the Petition” dated November 18, 2014 (“General Issues Supplement”), “Melamine from The People’s Republic of China/Petitioner’s Response to the Department’s Questions Regarding the Petition” dated November 18, 2014 (“PRC AD Supplement”), and “Melamine from Trinidad and Tobago/Petitioner’s Response to the Department’s Questions Regarding the Petition” dated November 18, 2014 (“Trinidad and Tobago AD Supplement”).

<sup>5</sup> See Letter from the Department to Petitioner entitled “Re: Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Melamine from the People’s Republic of China and Trinidad and Tobago: Supplemental Questions,” dated November 14, 2014 (“Second General Issues Supplemental Questionnaire”).

<sup>6</sup> See “Melamine from China and Trinidad and Tobago/Petitioner’s Response to the Department’s Second General Questions Regarding the Petition” dated November 20, 2014 (“Second General Issues Supplement”), *see also* Supplement to Petitions for the Imposition of Antidumping and Countervailing Duties against Melamine from China and Trinidad and Tobago,” dated November 24, 2014 (“Third General Issues Supplement”).

Department also finds that Petitioner demonstrated sufficient industry support with respect to the initiation of the AD investigations that Petitioner is requesting.<sup>7</sup>

#### Period of Investigations

Because the Petitions were filed on November 12, 2014, pursuant to 19 CFR 351.204(b)(1) the period of investigation (“POI”) for the PRC is April 1, 2014 through September 30, 2014, and for Trinidad and Tobago the POI is October 1, 2013, through September 30, 2014.

#### Scope of the Investigations

The product covered by these investigations is melamine from the PRC and Trinidad and Tobago. For a full description of the scope of these investigations, *see* “Scope of the Investigations” in Appendix I of this notice.

#### Comments on Scope of the Investigations

During our review of the Petitions, the Department issued questions to, and received responses from, Petitioner pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief.<sup>8</sup>

As discussed in the preamble to the Department’s regulations,<sup>9</sup> we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The period for scope comments is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual

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<sup>7</sup> See the “Determination of Industry Support for the Petitions” section below.

<sup>8</sup> See General Issues Supplemental Questionnaire and Second General Issues Supplemental Questionnaire; *see also* General Issues Supplement, Second General Issues Supplement, and Third General Issues Supplement.

<sup>9</sup> See *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27323 (May 19, 1997).

information should be limited to public information. All such comments must be filed by 5:00 p.m. Eastern Standard Time (“EST”) on December 22, 2014, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed no later than 10 calendar days after the initial comments deadline, which in this instance, is January 1, 2015. Because January 1, 2015, is a federal holiday, a non-business day, the revised deadline for these comments is now 5:00 p.m. EST on January 2, 2015.<sup>10</sup>

The Department requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact the Department and request permission to submit the additional information. All such comments must be filed on the records of the PRC and Trinidad and Tobago AD and CVD investigations.

#### Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>11</sup> An electronically-filed document must be received successfully in its entirety by the time and date it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance’s APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW,

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<sup>10</sup> See *Notice of Clarification: Application of “Next Business Day” Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>11</sup> See On November 24, 2014, Enforcement and Compliance changed the name of Enforcement and Compliance’s AD and CVD Centralized Electronic Service System (“IA ACCESS”) to AD and CVD Centralized Electronic Service System (“ACCESS”). The website location has changed from <http://iaaccess.trade.gov> to <http://access.trade.gov>. The Final Rule changing the references to the Regulations can be found at 79 FR 69046 (November 20, 2014).

Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of melamine to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: 1) general product characteristics; and 2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe melamine, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all comments must be filed by 5:00 p.m. EST on December 22, 2014, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed

by 5:00 P.M. EST on January 2, 2015. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the records of the PRC and Trinidad and Tobago less-than-fair-value investigations.

#### Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory

definition regarding the domestic like product,<sup>12</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>13</sup>

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petitions).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we determined that melamine constitutes a single domestic like product and we analyzed industry support in terms of that domestic like product.<sup>14</sup>

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the “Scope of the Investigations,” in Appendix I of this notice. To establish industry support, Petitioner provided its own production of the domestic like product in

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<sup>12</sup> See section 771(10) of the Act

<sup>13</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

<sup>14</sup> For a discussion of the domestic like product analysis in this case, see Antidumping Duty Investigation Initiation Checklist: Melamine from the People's Republic of China (“PRC AD Initiation Checklist”) at Attachment II, Analysis of Industry Support for the Petitions Covering Melamine from the People's Republic of China and Trinidad and Tobago (“Attachment II”); and Antidumping Duty Investigation Initiation Checklist: Melamine from Trinidad and Tobago (“Trinidad and Tobago AD Initiation Checklist”), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room 7046 of the main Department of Commerce building.

2013.<sup>15</sup> Petitioner states that it is the only producer of melamine in the United States; therefore, the Petitions are supported by 100 percent of the U.S. industry.<sup>16</sup>

Based on the data provided in the Petitions, supplemental submissions, and other information readily available to the Department, we determine that Petitioner has established industry support.<sup>17</sup> First, the Petitions established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>18</sup> Second, the domestic producers (or workers) met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petitions account for at least 25 percent of the total production of the domestic like product.<sup>19</sup> Finally, the domestic producers (or workers) met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.<sup>20</sup> Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petitions on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has

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<sup>15</sup> See Volume I of the Petitions, at 2 and Exhibit I-18.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> See PRC AD Checklist and Trinidad and Tobago AD Checklist, at Attachment II.

<sup>18</sup> See section 732(c)(4)(D) of the Act; *see also* PRC AD Checklist and Trinidad and Tobago AD Checklist, at Attachment II.

<sup>19</sup> See PRC AD Checklist and Trinidad and Tobago AD Checklist, at Attachment II.

<sup>20</sup> *Id.*



demonstrated sufficient industry support with respect to the AD investigations that it is requesting the Department initiate.<sup>21</sup>

#### Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than fair value. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>22</sup>

Petitioner contends that the industry's injured condition is illustrated by reduced market share, underselling and price depression or suppression, lost sales and revenues, and adversely impacted production, shipments, capacity utilization, financial performance, and capital expenditures.<sup>23</sup> We assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.<sup>24</sup> In accordance with section 771(7)(G)(ii)(III) of the Act, which provides an exception to the mandatory cumulation provision for imports from any country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act ("CBERA"), we considered Petitioner's allegation of injury with respect to Trinidad and Tobago, a designated beneficiary under CBERA, independently of the allegation for the PRC and found that the information provided satisfies the requirements for initiation.<sup>25</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> See Volume I of the Petitions, at 11-12 and Exhibit I-11.

<sup>23</sup> *Id.*, at 12-16 and Exhibits I-13 through I-20; see also Third General Issues Supplement, at 2-5 and Exhibits 1-4.

<sup>24</sup> See PRC AD Initiation Checklist and Trinidad and Tobago AD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Melamine from the People's Republic of China and Trinidad and Tobago ("Attachment III").

<sup>25</sup> *Id.*

## Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate investigations of imports of melamine from the PRC and Trinidad and Tobago. The sources of data for the deductions and adjustments relating to U.S. price and normal value (“NV”) are discussed in greater detail in the country-specific initiation checklists.

### *People’s Republic of China*

#### Export Price

For the PRC, Petitioner based export price (“EP”) on the POI average unit value (“AUV”) of melamine imports from the PRC under Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 2933.61.0000 (which is specific to subject merchandise), calculated using U.S. import statistics obtained from the ITC’s Dataweb. Petitioner also calculated EP based on a producer-specific price for Zhongyuan Dahua Group Company Ltd (“ZDG”) for one individual shipment of melamine during the POI. Petitioner obtained ship manifest data from the U.S. Customs and Border Protection’s (“CBP”) Automated Manifest System, via Datamyne, and directly linked monthly U.S. port-specific import statistics (obtained via Datamyne) for imports of melamine entered under HTSUS subheading 2933.61.0000 to a shipment by ZDG identified in the ship manifest data. Because the AUV and producer-specific price were based on FOB China port terms, Petitioner adjusted EP to deduct foreign inland freight and brokerage and handling at the port of exportation.<sup>26</sup>

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<sup>26</sup> See Volume II of the Petition, at 5 and Exhibits II-2 – II-5; see also PRC AD Supplement, at 1 and Exhibit II-S1.

## Normal Value

Petitioner states that the Department has a long-standing policy of treating the PRC as a non-market economy (“NME”) country for AD purposes.<sup>27</sup> The Department has not revoked the presumption of NME status for the PRC as of the date of these Petitions and therefore, in accordance with section 771(18)(C)(i) of the Act, remains in effect for purposes of the initiation of these investigations. Hence, an NME methodology is appropriate for valuing production performed in the PRC. Accordingly, the NV of the product is appropriately based on the factors of production (“FOP”) used in the manufacture of melamine and valued in a surrogate market economy country selected as a surrogate, in accordance with section 773(c) of the Act.

Petitioner contends that Indonesia is the appropriate surrogate country for the PRC because: it is at a level of economic development comparable to that of the PRC, and is a significant producer of comparable merchandise.<sup>28</sup> Furthermore, Petitioner states that integrated producers of melamine and comparable merchandise, *i.e.*, nitrogenous fertilizers such as urea, utilize the same equipment and production processes. Moreover, Petitioner states that Indonesian data for valuing the FOPs for melamine are available and reliable.<sup>29</sup> Petitioner states that the data includes a publicly available financial statement for PT Pupuk Kujang (“Kujang”), an integrated producer of nitrogenous fertilizers in Indonesia.<sup>30</sup> Based on the information provided by Petitioner, we believe that it is appropriate to use Indonesia as a surrogate country for initiation purposes.

After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will

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<sup>27</sup> See Volume II of the Petition, at 2.

<sup>28</sup> *Id.*, at 3.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*, at 4.

be provided an opportunity to submit publicly available information to value factors of production no later than 30 days before the date of the preliminary determination. In addition, in the course of the investigation covering merchandise from the PRC, all parties, including the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

#### Valuation of FOP Inputs

Because Petitioner does not have access to actual FOPs for any PRC manufacturers, Petitioner based consumption rates of FOPs, including direct materials, labor, energy, and packing, for the production of merchandise under consideration on its own experience.<sup>31</sup> Petitioner states that its experience is likely to be representative of the experience of integrated PRC producers. Petitioner valued the FOPs using surrogate value information from Indonesia. Petitioner based factory overhead, selling, general and administrative ("SG&A") expenses, and profit on the financial results of a surrogate producer of nitrogen based fertilizers in Indonesia.<sup>32</sup>

#### Valuation of Raw Materials

Petitioner valued the direct material FOPs to produce the merchandise under consideration using publicly available Indonesian import data obtained from Global Trade Atlas ("GTA") in U.S. dollars for the period March 2014 through August 2014.<sup>33</sup> Petitioner excluded all import values from all countries previously determined by the Department to maintain broadly available, non-industry-specific export subsidies, from countries previously determined by the Department to be NME countries, and unspecified countries.<sup>34</sup>

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<sup>31</sup> *Id.*, at 6.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, at 6-7; *see also* PRC AD Supplement, at 2 and Exhibit II-S5.

<sup>34</sup> *See* Volume II of the Petition at 6 -7 and Exhibit II-5.

### Valuation of Direct and Indirect Labor

Petitioner calculated the labor expense rate using 2010 data for Indonesia from the International Labor Organization under schedule 5B, Section 242: Manufacture of Other Chemical Products.<sup>35</sup> Petitioner adjusted this rate for inflation using the consumer price index for Indonesia published by the International Monetary Fund and converted the rate to U.S. dollars using the POI average exchange rate.<sup>36</sup>

### Valuation of Electricity, Natural Gas, Compressed Air, and Water

Petitioner valued electricity using 2011 data published by the Indonesian Ministry of Energy and Mineral Resources in the 2012 Handbook of Energy & Economic Statistics of Indonesia.<sup>37</sup> Petitioner valued natural gas (and steam produced from natural gas) using GTA weight-based import data for propane natural gas as a proxy for natural gas converted to a BTU equivalent value.<sup>38</sup> Petitioner valued compressed air based on its own cost for compressed air adjusted for differences in Indonesian costs.<sup>39</sup> Petitioner valued water using a 2006 study by the United Nations Development Program “Disconnected: Poverty Water Supply and Development in Jakarta Indonesia.”<sup>40</sup> Petitioner adjusted these values for inflation using the wholesale price index for Indonesia published by the Organization for Economic Cooperation and Development (“OECD”) and converted these values to U.S. dollars using the POI average exchange rate.<sup>41</sup>

### Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

Petitioner calculated surrogate financial ratios (*i.e.*, factory overhead expenses, selling, general, and administrative expenses, and profit) based on the 2013 financial statements of

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<sup>35</sup> *Id.*, at 7 and Exhibit II-8.

<sup>36</sup> *Id.* at 7 and Exhibit II-11; *see also* PRC AD Supplement at 5, item 9, and Exhibit II-S8.

<sup>37</sup> *Id.* at 7 – 8 and Exhibit II-9

<sup>38</sup> *Id.* at 8 and Exhibit II-9; *see also* PRC AD Supplement at 4 and Exhibit II-S6.

<sup>39</sup> *Id.* at 3 – 4.

<sup>40</sup> *Id.* at 8 -9 and Exhibit II-9; *see also* PRC AD Supplement at 5 and Exhibit II-S7.

<sup>41</sup> *Id.* at 7 - 8 and Exhibits II-8 and II-11.

Kujang, an Indonesian producer of nitrogenous-based fertilizers.<sup>42</sup> Petitioner contends that Kujang, like ZDG and Petitioner, is a vertically integrated producer that produces urea from ammonia and, therefore, is an appropriate surrogate.<sup>43</sup>

### *Trinidad and Tobago*

#### Export Price

For Trinidad and Tobago, Petitioner based U.S. price on pricing data for Trinidadian melamine received from a U.S. customer.<sup>44</sup> Petitioner made deductions for movement and other expenses consistent with the sales and delivery terms of the price quotes (*e.g.*, U.S. and Trinidadian inland freight and brokerage and handling and ocean freight and insurance).<sup>45</sup>

#### Normal Value

For Trinidad and Tobago, the Petitioner alleged that the home market was not viable.<sup>46</sup> In addition, Petitioner alleged that sales of melamine in Trinidad's largest third-country export market were made at prices substantially below the fully-loaded cost of production ("COP"). Accordingly, Petitioner based NV on the constructed value ("CV") of the imported merchandise.<sup>47</sup>

#### Sales-Below-Cost Allegation

For Trinidad and Tobago, Petitioner provided information demonstrating reasonable grounds to believe or suspect that sales of melamine in the Italian market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the

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<sup>42</sup> *Id.* at Exhibit II-10.

<sup>43</sup> *Id.* at 9 and Exhibit II-10.

<sup>44</sup> *See* Volume III of the Petition, at Exhibit III-27.

<sup>45</sup> *Id.*, at Exhibit III-31. *See* Trinidad and Tobago AD Checklist for further information on this U.S. price calculation.

<sup>46</sup> *Id.* at 3-4 and Exhibit III-1 at 51.

<sup>47</sup> *Id.*, at 4-6 and Exhibits III-9 through III-17.

Department conduct a country-wide sales-below-cost investigation.<sup>48</sup> The Statement of Administrative Action (“SAA”), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements Act, states that an allegation of sales below COP need not be specific to individual exporters or producers.<sup>49</sup> The SAA states that “Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation.”<sup>50</sup>

Further, the SAA provides that section 773(b)(2)(A) of the Act retains the requirement that the Department have “reasonable grounds to believe or suspect” that below-cost sales have occurred before initiating such an investigation. Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices.<sup>51</sup>

#### Cost of Production

Pursuant to section 773(b)(3) of the Act, COP consists of the cost of manufacturing (“COM”); SG&A expenses; financial expenses; and packing expenses. Petitioner calculated COM based on the Petitioner’s experience adjusted for known differences between the U.S. and the industries of the respective country during the proposed POI.<sup>52</sup> Using average export values into Trinidad and Tobago for the year 2013 (as obtained from the GTA),<sup>53</sup> International Labor Organization wage data, and electricity, steam, and natural gas data (either obtained from or adjusted by price data reported by the Trinidadian and Tobagonian Government and Central

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<sup>48</sup> *Id.*

<sup>49</sup> *See* SAA, H.R. Doc. No. 103-316 at 833 (1994).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *See* Trinidad and Tobago AD Checklist.

<sup>53</sup> Because contemporaneous import data was not available for Trinidad and Tobago, Petitioner valued raw material inputs based on the average export values into Trinidad and Tobago for the year 2013, obtained from the GTA. *See* Trinidad and Tobago AD Checklist at 10.

Bank), Petitioner multiplied its own usage quantities by these publicly-available input values to account for price differences in the manufacture of melamine.<sup>54</sup>

Petitioner, at the request of the Department, relied on the 2013 financial statements of a producer of comparable merchandise (*i.e.*, methanol) to determine the SG&A and profit ratios, which is consistent with the Department’s practice. Petitioner calculated the overhead ratio based on its own production experience.<sup>55</sup>

Petitioner contends that that a third-country market (*i.e.*, Italy) is a viable comparison market for determining normal value and provided a price quote for melamine produced in Trinidad and Tobago and sold in this third-country market.<sup>56</sup> In order to calculate an “ex-factory” third-country net price, Petitioner made an adjustment for foreign inland freight costs, foreign brokerage and handling costs, and ocean freight costs.<sup>57</sup>

Based upon a comparison of the net price of the foreign like product in the third-country market to the COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product in the comparison market were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act.<sup>58</sup> Accordingly, the Department is initiating a country-wide cost investigation relating to sales of melamine sold in Trinidad and Tobago’s third-country market, Italy.

#### Normal Value Based on Constructed Value

Because Trinidad and Tobago does not have a viable home market and certain third-country prices fell below COP, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act,

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<sup>54</sup> *Id.*; see also Volume III of the Petition, at 7 and Exhibit III-21 through III-26.

<sup>55</sup> *Id.*

<sup>56</sup> See Trinidad and Tobago AD Checklist and Volume III of the Petition, at 4.

<sup>57</sup> *Id.*, at 4, at 5 – 6 and Exhibits III-11 through III-17; see also Trinidad and Tobago AD Supplement, at 1-2 and Exhibits III-S1 through III-S5.

<sup>58</sup> See Trinidad and Tobago AD Supplement, at 3-4 and Exhibit III-S7 at 5 and Exhibit III-S9.



Petitioner based NV on CV.<sup>59</sup> Petitioner calculated CV using the same average COM, SG&A, overhead, and financial expenses used to compute COP, as discussed above. That is, Petitioner constructed CV based on its own consumption rates during the proposed POI and generally valued inputs using recent trade data for all countries exporting to Trinidad and Tobago, along with other Trinidadian pricing information, as appropriate.<sup>60</sup> Petitioner, at the request of the Department, relied on the 2013 financial statements of a producer of comparable merchandise (*i.e.*, methanol) to determine the SG&A and profit ratios. Petitioner calculated the overhead ratio based on its own production experience.<sup>61</sup>

#### Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of melamine from the PRC and Trinidad and Tobago are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of export price to NV in accordance with section 773(a) of the Act, the estimated AD margins for PRC range from 255.44 to 336.31 percent.<sup>62</sup> Based on comparisons of export price to CV, the estimated AD margin for Trinidad and Tobago range from 166.9 to 189.1 percent.<sup>63</sup>

#### Initiation of Less-than-Fair-Value Investigations

Based upon the examination of the AD Petitions on melamine from PRC and Trinidad and Tobago, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of melamine from the PRC and Trinidad and Tobago are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1),

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<sup>59</sup> See Trinidad and Tobago AD Initiation Checklist.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> See PRC AD Initiation Checklist.

<sup>63</sup> See Trinidad and Tobago AD Initiation Checklist.

unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

### Respondent Selection

Although the Department normally relies on import data from CBP to select a limited number of producers/exporters for individual examination in AD investigations, if appropriate, these Petitions name only one company as a producer/exporter of melamine in Trinidad and Tobago: Methanol Holdings (Trinidad) Ltd., and Petitioner provided information from an independent third party source as support.<sup>64</sup> Furthermore, we currently know of no additional producers/exporters of subject merchandise from Trinidad and Tobago. Accordingly, the Department intends to examine all known producers/exporters in this investigation (*i.e.*, the company cited above). We invite interested parties to comment on this issue. Parties wishing to comment must do so within five days of the publication of this notice in the *Federal Register*. Comments must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. EST by the date noted above.

With respect to the PRC, Petitioner identified 54 potential respondents.<sup>65</sup> In accordance with our standard practice for respondent selection in AD investigations involving NME countries, we intend to issue quantity and value questionnaires to each potential respondent named in the Petition,<sup>66</sup> and will base respondent selection on the responses received. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Enforcement and Compliance website (<http://trade.gov/enforcement/news.asp>). Exporters and producers of melamine from the PRC

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<sup>64</sup> See Volume III of the Petition at 1 and Exhibit III-1.

<sup>65</sup> See Volume I of the Petition at Exhibit I-5.

<sup>66</sup> *Id.*

that do not receive quantity and value questionnaires via mail may still submit a quantity and value response, and can obtain a copy from the Enforcement and Compliance website. The quantity and value questionnaire response must be submitted by all PRC exporters/producers no later than 5:00 P.M. EST on December 17, 2014. All quantity and value questionnaire responses must be filed electronically using ACCESS.

### Separate Rates

In order to obtain separate rate status in an NME AD investigation, exporters and producers must submit a separate rate application.<sup>67</sup> The specific requirements for submitting the separate rate application in the PRC investigation are outlined in detail in the application itself, which will be available on the Department's website at <http://enforcement.trade.gov/nme/nme-sep-rate.html> on the date of publication of this initiation notice in the *Federal Register*. The separate rate application will be due 60 days after the publication of this initiation notice no later than 5:00 P.M. EST. For exporters and producers who submit a separate rate status application and have been selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that the PRC respondents submit a response to both the quantity-and-value questionnaire and the separate rate application by their respective deadlines referenced above in order to receive consideration for separate rate status.

### Use of Combination Rates

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<sup>67</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005) ("Separate Rates and Combination Rates Bulletin"), available on the Department's website at <http://enforcement.trade.gov/policy/>.

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.<sup>68</sup>

#### Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of the PRC and Trinidad and Tobago via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

#### ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

#### Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of melamine from the PRC and

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<sup>68</sup> See Separate Rates and Combination Rates Bulletin, at 6 (emphasis added).

Trinidad and Tobago are materially injuring or threatening material injury to a U.S. industry.<sup>69</sup>

A negative ITC determination for any country will result in the investigation being terminated with respect to that country;<sup>70</sup> otherwise, these investigations will proceed according to statutory and regulatory time limits.

### Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule*, 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and CVD proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after

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<sup>69</sup> See section 733(a) of the Act.

<sup>70</sup> *Id.*

May 10, 2013, and thus are applicable to these investigations. Interested parties should review the final rule, available at <http://enforcement.trade.gov/frn/2013/1304frn/2013-08227.txt> prior to submitting factual information in these investigations.

#### Revised Extension of Time Limits Regulation

On September 20, 2013, the Department modified its regulation concerning the extension of time limits for submissions in AD and CVD proceedings.<sup>71</sup> The modification clarifies that parties may request an extension of time limits before a time limit established under 19 CFR 351 expires, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2) filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction information filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) quantity and value questionnaires. Under certain circumstances, the Department may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, the Department will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This modification also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which the Department will grant untimely-

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<sup>71</sup> See *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013).

filed requests for the extension of time limits. These modifications are effective for all segments initiated on or after October 21, 2013, and thus are applicable to these investigations. Interested parties should review *Extension of Time Limits; Final Rule*, available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in these investigations.

### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>72</sup> Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.<sup>73</sup> The Department intends to reject factual submissions if the submitting party does not comply with the applicable revised certification requirements.

### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

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<sup>72</sup> See section 782(b) of the Act.

<sup>73</sup> See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR  
351.203(c).

Dated: December 2, 2014.

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Paul Piquado,  
Assistant Secretary  
for Enforcement and Compliance.



## **Appendix I**

### **Scope of the Investigations**

The merchandise subject to these investigations is melamine (Chemical Abstracts Service (“CAS”) registry number 108-78-01, molecular formula  $C_3H_6N_6$ ).<sup>1</sup> Melamine is a crystalline powder or granule typically (but not exclusively) used to manufacture melamine formaldehyde resins. All melamine is covered by the scope of these investigations irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of these investigations. Melamine that is otherwise subject to these investigations is not excluded when commingled with melamine from sources not subject to these investigations. Only the subject component of such commingled products is covered by the scope of these investigations.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

**[FR Doc. 2014-28840 Filed 12/08/2014 at 8:45 am; Publication Date: 12/09/2014]**

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<sup>1</sup> Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names.